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Alex B. Vakula AZ State Bar No. 011749 VAKULA◆KOTTKE. PLC

TELEPHONE (928) 445-3500 vakula@pobox.com

ATTORNEYS FOR Plaintiff TONTO SUPPLY, INC.

Defendants.

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

TONTO SUPPLY, INC., an Arizona corporation,) Civil Action No. CV 09-8128-PCT-JWS
Plaintiff,	AMENDED COMPLAINT TO QUIET TITLE
v. UNITED STATES OF AMERICA; DEPARTMENT OF THE INTERIOR, and BUREAU OF LAND MANAGEMENT,) (Assigned to the Honorable) John W. Sedwick))))))

Plaintiff alleges as follows:

Parties

- 1. Plaintiff TONTO SUPPLY, INC. ("TONTO") is an Arizona corporation which has its principal place of business in and does business in Mohave County, Arizona.
- 2. Defendant UNITED STATES OF AMERICA is the federal government and is the record owner of the mineral estate relevant to this action as further described below.
- 3. Defendant UNITED STATES DEPARTMENT OF THE INTERIOR is the department of the federal government to which Congress delegated specific authority to administer the public lands under federal law, and hence the above referenced mineral estate.

- 4. Defendant UNITED STATES BUREAU OF LAND MANAGEMENT ("BLM") is the agency within the DOI that has been delegated specific authority by congress to administer public lands under federal law, and hence the above referenced mineral estate.
- 5. The Court has subject matter jurisdiction under 28 U.S.C. §§1346(f) and 2409a.
- 6. Venue is proper pursuant to 28 U.S.C. §§1391(e) and 1402(d) in that the land at issue is located in Arizona.

General Allegations

- 7. On or about July 10, 2008, Plaintiff entered into a joint venture agreement with R&G Gravel to develop certain real property located in Mohave County, Arizona as a gravel pit, and to market and sell material produced therefrom. A true and accurate copy of the Agreement which is attached hereto as **Tab 1**.
- 8. The real property that is the subject of the Agreement is legally described as follows:

The sand and gravel located within 100 feet of the surface of the following real property:

The Northwest quarter of the Northwest quarter of Section 13, Township 15 North, Range 20 West of the Gila and Salt River Base and Meridian, Mohave County, Arizona

(hereinafter, the "Property").

- 9. In connection with the Agreement, R&G Gravel represented that it owned 100 feet of sand and gravel deposits under the Property based upon a Quitclaim Deed issued by the Santa Fe Pacific Railroad Company. A true and accurate copy of which is attached hereto as **Tab 2**.
- 10. Notwithstanding the Quitclaim Deed, First American Title Insurance
 Company of Mohave County, Arizona issued a condition of title report which
 concludes that the mineral and surface estate on the Property is held in the name of

the United States of America. First American's condition of title report is attached hereto and incorporated as **Tab 3**.

- 11. The recorded documents referenced in First American's condition of title report are attached hereto as **Tabs 4 through 8**.
- 12. Notwithstanding the recorded documents referenced herein, upon information and belief, BLM's records reflect that United States of America does <u>not</u> own the Property or the mineral estate thereunder, but only the surface estate which lies above the Property.
- 13. To the extent the Quitclaim Deed is valid, Plaintiff holds an interest in and to the Property as a tenant by partnership, a partner, or joint venturer with R&G Gravel.
- 14. Plaintiff is entitled to this Court's declaration regarding the title or estate owned by the Defendants, if any, in and to the Property.
- 15. Plaintiff is entitled to this Court's Order extinguishing, releasing, remising and otherwise quieting any claim of the Defendants in and to the Property.
- 16. Alternatively, if this Court determines that the Defendants do have some right, title, or interest in or to the Property, Plaintiff requests further relief from this Court to exercise its exclusive jurisdiction over all parties who may claim any adverse interest in or to the Property.

Claim for Relief (Quiet Title)

- 17. Plaintiff realleges and incorporates herein by reference each and every allegation of the Complaint as if herein set forth in full.
- 18. Plaintiff requests that this Court recognize the validity of the Quitclaim Deed attached hereto, recognizing the Plaintiff's interest in and to the Property as a tenant by partnership, a partner, or joint venturer with R&G Gravel.

- 19. Alternatively, Plaintiff requests that this Court recognize Defendants as the sole record title holders of the Property.
- 20. Plaintiff requests that the Court recognize and declare that the Property is owned by the general partnership or joint venture formed between Plaintiff and R&G Gravel and quiet title to Plaintiff as to an undivided interest in and to Property and that the nature of Plaintiff's ownership is tenancy by partnership.
- Alternatively, Plaintiff requests that this Court recognize one or more of the Defendants as the sole record title holders of the Property.

WHEREFORE, Plaintiff TONTO SUPPLY, INC. prays for judgment against Defendants UNITED STATES OF AMERICA; DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT and DOES I through X as follows:

- 1. For this Court's Order quieting title in the Property as identified above;
- 2. For Plaintiff's reasonable attorneys' fees and costs incurred and accruing herein, in a specific amount to be determined at trial;
 - 3. For costs incurred herein; and
 - For such other and further relief that the Court may deem appropriate. 4.

DATED this 24th day of September, 2009.

VAKULA KOTTKE, PLC

By s/ Alex B. Vakula Alex B. Vakula 212 East Gurley Street Prescott, Arizona 86301 Attorneys for Plaintiff TONTO SUPPLY, INC.

Certificate of Service

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I hereby certify that on this 24th day of September, 2009, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

- 4 Dennis K. Burke, Esq. United States Attorney
- 5 Sue A. Klein, Esq.

Assistant United States Attorney

6 District of Arizona

Two Renaissance Square

7 40 North Central Avenue, Suite 1200

Phoenix, Arizona 85004-4408

8 Attorneys for Defendants UNITED STATES OF AMERICA,

DEPARTMENT OF THE INTERIOR, and

BUREAU OF LAND MANAGEMENT

I further certify that on this 24th day of September, 2009, I served a courtesy copy of the attached document via First Class Mail on the following:

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Honorable John W. Sedwick

United States District Court

District of Arizona

Federal Building and U.S. Courthouse

222 West 7th Avenue, Box 32

- 4 Anchorage, Alaska 99513-9513
- 15 By s/ Anne Jack

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